

Patent App. Ser., No. 10/825,715
Amendment, Dated: 05 June 2006
In Reply to Office Action Mailed: 29 September 2005

REMARKS/ARGUMENTS

Applicant's original Attorney of Record, Andrea Mays, did not receive the original office action mailing dated 29 September 2005 (hereinafter Office Action #1). She left the employment of the firm originally listed as the correspondence address (Mays & Fain, LLP) in July 2005. However, mail was still regularly received at the correspondence address under the name of Mays & Fain, LLP and the new firm name, Fain IP Law, P.C. by Ms. Mays' former partner, Katy Fain. The original office action was not received at the correspondence address. A telephone call was received by Ms. Mays at her new employment from the Examiner after the time for response to Office Action #1 expired. A Notice of Abandonment was mailed to the correspondence address on 05 April 2006. In response to the Notice of Abandonment and Office Action #1, this response is filed with a new Power of Attorney and a Petition for Revival of the Application.

Claims 1-17 are pending in this application. Claims 1-10, 12-14, 16 and 17 were rejected in Office Action #1 dated 29 September 2005. Claims 11 and 15 were objected to in Office Action #1. New claims 18 and 19 are added with this Response, rewriting Claims 11 and 15 in Independent form.

Claims 1-7, 10 and 12-14 have been rejected by the Examiner under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 5,471,395 to Trocchio. The Applicant respectfully traverses the rejections and requests reconsideration based on the arguments contained herein.

The Examiner has rejected Claims 1-7, 10 and 12-14 under 35 U.S.C. § 102(b) as anticipated by Trocchio, stating that Trocchio discloses a training apparatus "comprising a training pad connected to a training pad arm . . . and a pivot assembly connected to the training pad arm comprising an elongated elastic member (see proximate lead line 26) that provides a resistive force in a plane approximately orthogonal to the length of the training pad arm . . ." The Applicant respectfully traverse the rejection since the spring described in Trocchio can neither function nor disclose an elastic member that provides a resistive force in a plane approximately orthogonal to the length of the training pad arm. (See Applicant's Claim 1) Trocchio does not teach the specifically teach the method of its resistive force, disclosing only the use of a spring and that its "arms respond to aggressive attacks by the athlete in a different manner dependent upon the direction and thrust of the athlete." (Col. 2, II. 47-52; Abstract, last sentence; Background, Col. 1, II.32-34) In fact, Trocchio does not even claim the spring for movement of the arm

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within its claims. Therefore, Trocchio's effect on the state of the art with regard to the spring attached to its arm 24 extends only to the statement above and its Figure 3. Figure 3 shows spring 26 disposed within padding 25 of collar 28 which is in turn disposed within cover 30. The cover is struck, spring 26, attached to arm 24 extends and then returns to its earlier compressed state to return cover 30 to its original position. The line of force of the spring would run along the length of the spring and along the line of arm 24.

Conversely, in the present application, Claim 1 limits the "pivot assembly" to one having "an elongated elastic member providing a resisting force in a plane approximately orthogonal to the length of said training pad arm. Since this would require the resistive force to be at a *right angle* to the training pad arm, which would reduce the oscillations to return the training pad to return quickly to its original position (Specification, p. 6, para. 2.) Therefore, the spring of Trocchio cannot disclose the required elongated elastic member of Claim 1, and in fact, Trocchio teaches away from the present apparatus since Trocchio discloses a device which "respond[s] to aggressive attacks by the athlete in a different manner dependent upon the direction and thrust of the athlete." (Abstract, last sentence; Background, Col. 1, II.32-34) As a result, each and every element of Claim 1 (and therefore its dependent claims) cannot be satisfied and there cannot be anticipation of the claim by Trocchio. The Applicant respectfully traverses the rejection and requests that it be withdrawn and the application be placed in line for allowance.

Additionally, with respect to Claims 12-14, Claim 12 sets forth the step of "resisting movement of the pad arm with an elastic member extending around the pad arm". Clearly Trocchio does not set out the resistance of an elastic member extending around the pad arm. As a result, each and every element of Claim 12 (and therefore its dependent claims) cannot be satisfied and there cannot be anticipation of the claim by Trocchio. The Applicant respectfully traverses the rejections and requests that they be withdrawn and the application be placed in line for allowance.

Claims 1, 8, 9, and 16 have been rejected by the Examiner under 35 U.S.C. § 103(a) as obvious over U.S. Patent No 5,788,612 to Rennick in view of U.S. Patent No. 5,662,564 to Nelson. The Applicant respectfully traverses the rejections and requests reconsideration based on the arguments contained herein.

The Examiner has rejected Claims 1, 8, 9, and 16 under 35 U.S.C. § 103(a) as obvious over U.S.

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Patent No 5,788,612 to Rennick in view of U.S. Patent NO. 5,662,564 to Nelson, stating that Rennick teaches the claimed invention in its Fig. 4 which shows a punching bag wherein the embodiment shows elastic bands attached to the lower shaft of the device on four different sides. Rennick describes its Fig. 4 as showing that "[t]he bands impart the principal rebound force to the shaft by resistance to elongation as the shaft is moved." (Col. 4, ll. 33-37) This would only be partially descriptive of the arrangement shown in Fig. 4. The entire device shown in the figure must be viewed to understand the effect of the forces applied to the elastic members disclosed in Fig. 4 in relation to those set forth in Claim 1 of the present application.

The kicking/punching device shown in Fig. 4 is a variant of that disclosed in Figs. 1-3 as well, disclosed as a kicking device. The description in Col. 3, l.65 through Col 4., l.38 of Rennick shows that the devices therein all contain the bearing housing 3 containing the resilient resinous bearing, the bag 1, and shaft 2. The description at Col. 4, l. 6 through l. 15 indicates that the shaft actually pivots within the bearing, allowing lift of the shot bucket of Fig. 2, or similarly, the lifting of the elastic members of Fig. 4 in the same arc subtended by an angle equal to that of the bag displacement. Since there must therefore be actually lifting of the attached members, the line of force of the elastic member cannot be in a line approximately orthogonal to the length of the training pad arm, but must instead be at an angle thereto, contrary to Claim 1 of the present invention.

The addition of Nelson is of no assistance to teaching each and every element of the rejected claims. Nelson teaches a completely rotational exercise apparatus wherein a handle 220/222 is fully rotated in a circular motion around a shaft 230 to swing a housing 300 about an axis passing through the shaft 230 wherein the movement of housing 300 is resisted by a band 500 extending between the upper housing 300 and lower housing 400 and is, incidentally, conformed around pins 410/412 for placement. Essentially, then, Nelson teaches a rowing-type machine where the user continues makes circles with the handle to achieve exercise, and wherein the resistance provided by the elastic band is used to make the rowing motion more difficult, not to return the handle to its original position with a minimum of oscillations. While resistance is used in both Nelson and the present invention, the effects are very dissimilar since oscillations are desired and taught in Nelson and use of oscillations is avoided in the present invention. In fact, the band does not stop the motion of the shaft, but continues its motion along with it. Therefore, the combination of Nelson and Rennick would not be taught or suggested to achieve the present invention. The Applicant respectfully requests that, as a result, the rejections be withdrawn and the claims be placed

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In line for allowance.

The Examiner has indicated that Claims 11 and 15 would be allowable if written in independent form. The Applicant has added new claims 18 and 19 which achieve this end. However, the Applicant wishes to maintain original Claims 11 and 15 in anticipation of the allowability of claims 1 and 12 from which these claims depend.

Therefore, it is respectfully requested that the rejections be withdrawn and that the application be placed in line for allowance. The Examiner is respectfully requested to telephone the undersigned if he believes any discussion will help in examination of the application.

Respectfully Submitted,



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